

**BellSouth Telecommunications, Inc.**  
**Legal Department**  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201

**Patrick W. Turner**  
General Counsel-South Carolina

803 401 2900  
Fax 803 254 1731

patrick.turner@bellsouth.com

August 10, 2005

Mr. Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, South Carolina 29211

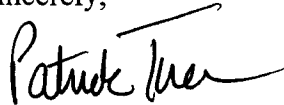
Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended  
Docket No. 2005-57-C

Dear Mr. Terreni:

Enclosed for filing are an original and ten copies of BellSouth Telecommunications, Inc.'s Objection to Joint Petitioners' Request in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,



Patrick W. Turner

PWT/nml  
Enclosure  
cc: All Parties of Record  
DM5 # 597108

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

In the Matter of )  
)  
Joint Petition for Arbitration of )  
)  
NewSouth Communications Corp., )  
NuVox Communications, Inc. )  
KMC Telecom V, Inc., KMC Telecom III LLC, and )  
Xspedius Communications, LLC on Behalf of its )  
Operating Subsidiaries Xspedius Management Co. )  
Switched Services, LLC, Xspedius Management Co. )  
Of Charleston, LLC, Xspedius Management )  
Co. of Columbia, LLC, Xspedius Management Co. )  
Of Greenville, LLC, and Xspedius Management Co. )  
Of Spartanburg, LLC )  
)  
Of an Interconnection Agreement with )  
BellSouth Telecommunications, Inc. )  
Pursuant to Section 252(b) of the )  
Communications Act of 1934, as Amended )  
\_\_\_\_\_ )

Docket No. 2005-57-C

**BELLSOUTH'S OBJECTION TO JOINT PETITIONERS' REQUEST**

On August 4, 2005, the Joint Petitioners filed "supplemental pages to complete the Rebuttal Testimony previously sponsored by Hamilton Russell." They requested that those pages be appended to "the Joint Petitioners' previously filed Rebuttal Testimony" and that Mr. Russell's testimony be restored "in its entirety" and entered into the formal record of this proceeding. In accordance with the Order Granting Motion to Strike Testimony that was entered in this docket on July 20, 2005, BellSouth Telecommunications, Inc. ("BellSouth") respectfully objects to this Request.<sup>1</sup>

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<sup>1</sup> See Order Granting Motion to Strike Testimony at 5 (reopening the proceedings, allowing the Joint Petitioners "to prefile testimony and exhibits by witnesses of their

The basis for BellSouth's objection is that Mr. Russell has a conflict of interest that prevents him from advocating legal and policy positions against BellSouth's interests without BellSouth's consent.<sup>2</sup> BellSouth has not and does not provide such consent. Mr. Russell, therefore, is disqualified from presenting the testimony that is the subject of the Joint Petitioners Request, and the Commission should therefore deny the Request. The legal basis for BellSouth's position is set forth in detail in: the Motion to Strike All Testimony Presented by Mr. Hamilton Russell, III filed June 14, 2005; the Memorandum in Reply to Joint Petitioners' Response to BellSouth Telecommunications, Inc.'s Motion to Strike; and the transcript of the oral argument presented June 29, 2005. Each of these documents are incorporated herein by reference.<sup>3</sup>

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choice" for limited purposes, and allowing BellSouth to "raise any objections that it feels are necessary to this testimony . . .").

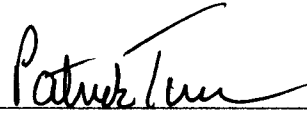
<sup>2</sup> The Order Granting Motion to Strike Testimony struck Mr. Russell's rebuttal and hearing testimony from the record because it "was incomplete" and this "prevented BellSouth from raising objections regarding his testimony." *Order* at 4. The Order, therefore, does not address the merits of BellSouth's conflict of interest arguments. *See Id.* at 3. Instead, the Order allows the Joint Petitioners to prefile testimony and exhibits "by witnesses of their choice . . . for the limited purpose of testifying as to those matters addressed in Russell's rebuttal testimony," and it allows BellSouth to "raise any objections that it feels are necessary to this testimony . . ." *Id.* While the "supplemental pages" submitted by the Joint Petitioners arguably cure the "incomplete" nature of the testimony that was stricken, they do nothing whatsoever to change the fact that the attorney seeking to advocate NuVox's legal and policy positions by way of such testimony has a conflict of interest that prevents him from doing so.

<sup>3</sup> Given that the Joint Petitioners are requesting that the exact same testimony that was addressed in these documents be resubmitted into the record, the analysis in these documents applies with equal force to the Joint Petitioner's Request. The fact that Mr. Russell apparently is no long a direct employee of NuVox is irrelevant – he still is an attorney who is seeking to appear on behalf of NuVox and offer legal and policy arguments that are favorable to NuVox and adverse to BellSouth. Whether he is being paid to do so has no bearing on the fact that he is representing a party whose interests are adverse to those of his client, BellSouth.

Finally, the Joint Petitioners were given the opportunity to submit testimony and exhibits “by witnesses of their choice . . . .”<sup>4</sup> The Joint Petitioners cannot credibly assert that they had no option other than to submit the testimony of a disqualified witness. To the contrary, after this conflict of interest was brought to light in South Carolina, the Joint Petitioners used an alternative witness for NuVox for the arbitration hearing held in Mississippi on June 15, 2005. Instead of choosing a similarly appropriate course of action in response to the Hearing Officer’s Order in this proceeding, the Joint Petitioners knowingly and intentionally chose to submit testimony and exhibits of a witness who is disqualified from presenting such testimony and exhibits. Having done so, they should not be permitted yet another bite of the apple. BellSouth, therefore, respectfully requests that the Commission close these proceedings and order the parties to submit post-hearing briefs on the basis of the record that exists as a result of the Order Granting Motion to Strike Testimony.

Respectfully submitted, this 10th day of August, 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.



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PATRICK W. TURNER  
Suite 5200  
1600 Williams Street  
Columbia, South Carolina 29201  
(803) 401-2900

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<sup>4</sup> See Order Granting Motion to Strike Testimony at 5.

STATE OF SOUTH CAROLINA

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CERTIFICATE OF SERVICE

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COUNTY OF RICHLAND

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The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth's Objection to Joint Petitioners' Request in Docket No. 2005-57-C to be served upon the following this August 10, 2005:

Florence P. Belser, Esquire  
General Counsel  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, South Carolina 29211  
**(U. S. Mail and Electronic Mail)**

Wendy B. Cartledge, Esquire  
Staff Attorney  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, South Carolina 29211  
**(U. S. Mail and Electronic Mail)**

F. David Butler, Esquire  
Senior Counsel  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

Jocelyn G. Boyd, Esquire  
Staff Attorney  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

Joseph Melchers  
Chief Counsel  
S.C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U.S. Mail and Electronic Mail)**

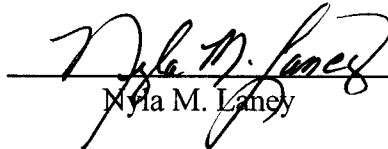
John J. Pringle, Esquire  
Ellis Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, South Carolina 29202  
(NewSouth, NuVox, KMC, Xspedius)  
**(U. S. Mail and Electronic Mail)**

John J. Heitmann  
Stephanie Joyce  
Garrett R. Hargrave  
KELLEY DRYE & WARREN LLP  
1200 Nineteenth Street, N.W., Suite 500  
Washington, D.C. 20036  
**(U. S. Mail and Electronic Mail)**

Bo Russell  
Regional Vice President – Regulatory  
and Legal Affairs SE  
2 North Main Street  
Greenville, South Carolina 29601  
(NuVox/NewSouth)  
**(U. S. Mail and Electronic Mail)**

Marva Brown Johnson  
Senior Regulatory Policy Advisor  
1755 North Brown Road  
Lawrenceville, Georgia 30043  
(KMC)  
**(U. S. Mail and Electronic Mail)**

James C. Falvey  
Senior Vice President – Regulatory Affairs  
Xspedius  
14405 Laurel Place, Suite 200  
Laurel, Maryland 20707  
(Xspedius)  
**(U. S. Mail and Electronic Mail)**



Nyla M. Laney

PC Docs # 577384